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17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

19

20 CALIFORNIA COALITION FOR WOMEN  
PRISONERS et al.,

21 Plaintiffs,

22 v.

23 UNITED STATES OF AMERICA FEDERAL  
BUREAU OF PRISONS et al.,

24 Defendants.

Case No. 4:23-cv-04155-YGR

25

PLAINTIFFS' OPPOSITION TO  
UNITED STATES' NOTICE OF  
MOTION TO DISMISS, STAY  
DISCOVERY, AND TERMINATE  
PROSPECTIVE RELIEF

Date: July 30, 2024

Time: 2:00 p.m.

Crtrm.: 1, 4th Floor

Judge: Hon. Yvonne Gonzalez Rogers

Trial Date: June 23, 2025

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[4522333.2]

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Case No. 4:23-cv-04155-YGR

PLTFS' OPP. TO UNITED STATES' NOTICE OF MOT. TO DISMISS, STAY DISCOVERY, AND TERMINATE  
PROSPECTIVE RELIEF

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1     **I. INTRODUCTION**

2                 Rather than addressing the systemic issues in the Bureau of Prisons (BOP) made  
 3 plain by the instant litigation, Defendants have chosen to return to their familiar, and now  
 4 tired, refrain: ‘all is now well in the BOP.’ In moving to dismiss this case, Defendants  
 5 seek to circumvent the explicit guardrails established by courts to ensure that parties will  
 6 not attempt to strategically moot litigation to shield bad acts from court scrutiny. One  
 7 week after the court-appointed Special Master began work at the facility, the BOP  
 8 announced the abrupt, temporary closure of FCI Dublin, scattering class members to  
 9 facilities across the country, while acknowledging potential plans to reopen FCI Dublin in  
 10 the future. No evidence in the record undermines the inference that the sudden closure was  
 11 an attempt to moot the instant litigation. Nor have Defendants provided any record  
 12 evidence to establish that they do not, and will not, continue to violate the rights of the  
 13 same class members who remain in their custody – particularly not to the high standard set  
 14 by the voluntary-cessation mootness doctrine.

15                 The violations at FCI Dublin did not occur in a vacuum. As alleged in the First  
 16 Amended Complaint (FAC), BOP practices, policies, and neglectful oversight allowed the  
 17 horrors to continue unabated. Even now after the Court and prosecutors removed some of  
 18 the worst actors, the practices and policies that protected the perpetrators are unchanged  
 19 and continue to harm class members. The Court has repeatedly recognized the ongoing  
 20 risk of harm and need for continued narrow relief, including most recently in its July 1,  
 21 2024 order, which resolves Defendants’ arguments regarding the expiration of the Court’s  
 22 orders under the Prison Litigation Reform Act (PLRA) by extending the Court’s prior  
 23 order. The order also addressing their mootness claims, noting that “[t]he fact that the BOP  
 24 may have closed FCI Dublin does not relieve [BOP] of their obligations.” Order  
 25 Extending Preliminary Injunctive Relief; Requiring Meet and Confer at 1.

26                 When government Defendants argue to dismiss on mootness grounds “[i]t is the  
 27 duty of the courts to beware of efforts to defeat injunctive relief by protestations of  
 28 repentance and reform . . . .” *See United States v. Oregon State Med. Soc.*, 343 U.S. 326,

1 333 (1952). To be sure, this might be a harder case if Defendants could point to  
 2 substantive BOP policies and practices that they changed to address the issues and  
 3 evidence raised by this case. Here, however, Defendants do not seriously repudiate their  
 4 past actions or point to specific reforms. Defendants' only argument is that the temporary  
 5 closure of one facility somehow moots a case where the same class members have the  
 6 same claims, against the same Defendants, in whose custody they remain. That is a live  
 7 case and controversy, not the stuff of mootness.

8 Defendants are unnecessarily throwing everything they can up against the wall to  
 9 avoid accountability rather than simply engaging in litigation of this case or in the ordered  
 10 settlement process which would expeditiously resolve this matter for the benefit of all.

## 11 **II. ARGUMENT**

### 12 **A. The Court’s Order Extending the Preliminary Injunctive Relief 13 Resolves Defendants’ Motion.**

14 On July 1, 2024, this Court issued an Order Extending Injunctive Relief and  
 15 Requiring a Meet and Confer (“Extension Order”). ECF No. 336. In that order the Court  
 16 held (1) that the narrow preliminary injunctive relief in this matter is extended 90 days to  
 17 October 2, 2024; and (2) that “[t]he fact that the BOP may have closed FCI Dublin does  
 18 not relieve them of their obligations.” Extension Order at 1, 7. The Court also reiterated  
 19 the narrow scope of the existing injunction which only requires particular reporting and  
 20 specific action related to former residents of FCI Dublin and reiterated the findings upon  
 21 which that narrow relief was founded. *See* Extension Order at 5-7. Because Defendants’  
 22 motion to dismiss and to vacate relief was based solely on mootness following the closure  
 23 of FCI Dublin and the 90-day automatic expiration of relief required by the PLRA, their  
 24 motion is resolved by the Extension Order as are any arguments that the needs-  
 25 narrowness-intrusiveness requirements of the PLRA have not been met in this case. To the  
 26 extent that the Extension Order does not resolve Defendants’ Motion, Plaintiffs preserve  
 27 their arguments and address Defendants’ motion below.

28

1           **A. Defendants' motion under 12(b)(1) is inappropriate and untimely.**

2           A motion to dismiss for lack of subject-matter jurisdiction “must be made before  
 3 pleading if a responsive pleading is allowed.” Fed. R. Civ. P. 12(b). Although the Court  
 4 can consider a challenge to subject-matter jurisdiction at any stage in the litigation, *see*  
 5 Fed. R. Civ. P. 12(h)(3), the Court has effectively already asserted jurisdiction post-  
 6 closure, and Defendants’ motion does not alter that analysis.

7           According to Defendants’ own timeline, BOP notified the Court of its decision that  
 8 “it needed to close FCI Dublin” on March 14, 2024. United States’ Notice of Motion and  
 9 Memorandum of Points and Authorities in Support of Motion to Dismiss, Stay Discovery,  
 10 and Terminate Prospective Relief at 5 (“Defendants’ Motion”). On April 16, 2024,  
 11 Defendants filed a Motion for Relief pursuant to Rule 60 of the Federal Rules of Civil  
 12 Procedure on the basis that the Court, among other things, “lacks jurisdiction to impose”  
 13 requirements regarding the transfer process. ECF No. 257 at 15. On May 1, “[t]he last  
 14 female AIC left FCI Dublin.” Defs’ Mot. at 7. On May 6, Defendants filed an Answer,  
 15 not a motion to dismiss. ECF No. 299. Two days later the Court issued its Order re  
 16 Closure of FCI Dublin & Preliminary Injunction and ruled on Defendants’ pending motion  
 17 for relief under Rule 60. ECF No. 300 (“Closure Order”). The Court found “[i]t strains  
 18 credulity for the BOP to assert that the Court’s guidance to the BOP” during and after the  
 19 closure “was unlinked to any source of legitimate authority.” *Id.* at 12-13. The Court went  
 20 on to order BOP to take specified measures to address the “cumulative impact of FCI  
 21 Dublin’s insufficient staffing and related medical and mental health care inadequacies”  
 22 which were “still being felt by the AICs in need of treatment.” *Id.* at 10. In short, the  
 23 Court made clear there remained a redressable constitutional injury. What the Court stated  
 24 then remains true today, and was reiterated in the Court’s July 1 Extension Order.  
 25 Defendants’ attempt to re-raise the issue is improper, and nothing would justify the Court’s  
 26 departure from its prior determination. *See United States v. Lummi Indian Tribe*, 235 F.3d  
 27 443, 452 (9th Cir. 2000) (explaining that “a court is generally precluded from  
 28 reconsidering an issue previously decided by the same court.”); *United States v. Alexander*,

1 106 F.3d 874, 876 (9th Cir. 1997). The Court has authority to deny Defendants' motion on  
 2 that basis alone.

3 If the Court considers the merits of Defendants' factual 12(b)(1) motion, the court  
 4 need not but "may consider the evidence presented with respect to the jurisdictional issue  
 5 and rule on that issue, resolving factual disputes if necessary." *Jones v. L.A. Cent. Plaza*  
 6 *LLC*, 74 F.4th 1053, 1057 n.2 (9th Cir. 2023) (quoting *San Diego Cnty. Credit Union v.*  
 7 *Citizens Equity First Credit Union*, 65 F.4th 1012, 1028 (9th Cir. 2023)). "Once the  
 8 moving party has converted the motion to dismiss into a factual motion by presenting  
 9 affidavits or other evidence properly brought before the court, the party opposing the  
 10 motion must furnish affidavits or other evidence necessary to satisfy its burden of  
 11 establishing subject matter jurisdiction." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035,  
 12 1039 (9th Cir. 2004); *see also Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).  
 13 Any evidence that government Defendants seek to offer to show relief is no longer  
 14 necessary should be addressed at the upcoming evidentiary hearing after a full opportunity  
 15 for discovery.

16       **B. This case is not moot because Defendants have not ceased their unlawful  
 17 conduct: the same class is still in custody of the same Defendants and  
 18 subject to the same policies and practices as alleged in the complaint.**

19 A court with jurisdiction has a "virtually unflagging obligation" to hear and resolve  
 20 the claims before it. *FBI v. Fikre*, 601 U.S. 234, 240 (2024) (quoting *Colo. River Water*  
*Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). A defendant asserting  
 21 mootness on the basis of an intervening circumstance bears the burden to show the issues  
 22 are no longer live. *West Virginia v. EPA*, 597 U.S. 697, 719 (2022). That burden is  
 23 particularly "heavy" where "[t]he only conceivable basis for a finding of mootness in th[e]  
 24 case is [the defendant's] voluntary conduct." *Id.* (quoting *Friends of the Earth, Inc. v.*  
*Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000)). Voluntary conduct by a  
 25 defendant "does not moot a case unless 'subsequent events ma[ke] it absolutely clear that  
 26 the allegedly wrongful behavior could not reasonably be expected to recur.'" *Trinity*  
*Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 457 n.1 (2017) (quoting

1 *Friends of the Earth*, 528 U.S. at 189). A logical prerequisite for mootness is that the  
 2 allegedly wrongful behavior actually has ceased. And although the government is entitled  
 3 to more solicitude than a private defendant, the Ninth Circuit has explained, “This is no  
 4 bare deference: we probe the record to determine whether the government has met its  
 5 burden, even as we grant it a presumption of good faith.” *Brach v. Newsom*, 38 F.4th 6, 13  
 6 (9th Cir. 2022); *see also Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014).

7       Contrary to the Government’s contention, BOP’s sudden closure of Dublin did not  
 8 moot this action because Plaintiffs still bear the same constitutional injuries by the same  
 9 defendants as at all points in this litigation. As the Ninth Circuit recently reiterated,  
 10 “where a prisoner challenges a policy that applies across multiple institutions and has  
 11 named at least one defendant capable of providing relief across those institutions, a prison  
 12 transfer will not moot a case.” *Tiedemann v. von Blanckensee*, 72 F.4th 1001, 1008–09  
 13 (9th Cir. 2023) (citing *Walker v. Beard*, 789 F.3d 1125, 1132 (9th Cir. 2015); *Nelson v.*  
 14 *Heiss*, 271 F.3d 891, 897 (9th Cir. 2001)). That is precisely the case here. Plaintiffs  
 15 named the BOP and its director as Defendants. FAC ¶¶ 27–30, ECF No. 152. Plaintiffs  
 16 did so because BOP policies and actions (or concerted inaction) placed them at serious risk  
 17 of sexual abuse and medical neglect and ongoing retaliation in specific ways that are not  
 18 limited to FCI Dublin – nor to any other single BOP institution. For instance, as the  
 19 pleadings make clear, Plaintiffs seek relief from long-standing policy failures that resulted  
 20 in inadequate reporting mechanisms, nonexistent or negligent investigations into claims of  
 21 abuse, deficient medical- and mental-health care, and compromised access to legal  
 22 services. All of those injuries derive from the challenged regional and national BOP  
 23 policies and the inadequate actions of outside agencies (including DOJ OIG). *See, e.g.*,  
 24 FAC ¶¶ 8, 60–70 (detailing Defendant BOP’s failure to comply with PREA); *id.* at ¶¶ 71–  
 25 105 (detailing BOP’s awareness of ongoing sexual assault against AICs for decades and  
 26 repeated failures to take action); *id.* at 258–262 (Second Claim for Relief for violation of  
 27 Substantive Due Process, alleging non-delegable duty to ensure constitutionally adequate  
 28 conditions in all BOP facilities); *id.* at 263–267 (Third Claim for Relief for Retaliation for

1 Exercise of First Amendment Rights, same). The Government itself repeatedly  
 2 emphasized at the evidentiary hearing that it is regional and national BOP guidance that  
 3 provide the operating framework for addressing the issues arising out of Dublin. *See, e.g.*,  
 4 Evidentiary Hearing Tr. 257:17-258:2 (Deveney testifying that FCI Dublin had no local  
 5 staff misconduct policies and relied entirely on national policies); Tr. 272:16-274:11 (same  
 6 for PREA policies); Tr. 983-2-5 (Wilson, same as to medication formulary); Tr. 1124:14-  
 7 1125:1 (Mulcahey, same for mental health staffing); Tr. 50:10-12 (Quezada, same for SHU  
 8 policy).

9       In light of the claims Plaintiffs actually pleaded against Defendant BOP, the  
 10 Government's assertion that this case is moot because there is no expectation that class  
 11 members will be transferred back to Dublin, Defendants' Motion at 9, misses the point.  
 12 While Plaintiffs certainly challenged specific failures at Dublin, the relief they sought was  
 13 on behalf of the class and some of the relief can only be provided by the BOP itself. FAC  
 14 532. In any event, the Government's reliance on the declaration of William Lothrop,  
 15 Deputy Director, is unavailing. In his declaration, Deputy Director Lothrop states only  
 16 that BOP "is able to presently care for its female AIC population and anticipates the ability  
 17 to meet their future needs without requiring the use of the FCI Dublin facility." ECF No.  
 18 326-1 ¶ 7. But the U.S. Supreme Court has held that such equivocal language, specifically  
 19 limited to present circumstances and hedging about future developments, is insufficient as  
 20 a matter of law to satisfy the "formidable standard" applied to claims of mootness. *Fikre*,  
 21 601 U.S. at 242-43 (rejecting mootness argument based on Government's "sparse  
 22 declaration" that it would not repeat conduct "based on the currently available  
 23 information"). Such equivocal language is insufficient because "voluntary cessation does  
 24 not moot a case" unless it is "*absolutely clear* that the allegedly wrongful behavior could  
 25 not reasonably be expected to recur." *West Virginia*, 597 U.S. at 720 (emphasis added)  
 26 (quoting *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719  
 27 (2007) ); *see also Fikre*, 601 U.S. at 243 ("In all cases, it is the defendant's 'burden to  
 28 establish' that it cannot reasonably be expected to resume its challenged conduct—whether

1 the suit happens to be new or long lingering, and whether the challenged conduct might  
 2 recur immediately or later at some more propitious moment.”). Here, Deputy Director  
 3 Lothrop himself acknowledges that future factors “impacting federal prisoner populations,  
 4 like overcrowding, may require BOP to reopen FCI Dublin at some point in the future.”  
 5 Defs.’ Mot. to Dismiss ¶ 7, ECF No. 326-1. The Government has failed to meet its  
 6 demanding burden.

7 Defendants remain capable of providing the requested relief: implementing actions  
 8 to protect the constitutional rights of the plaintiff class members, wherever they may be  
 9 located. The Court has repeatedly found that Defendants are capable of providing this  
 10 systemic relief. When the Court granted class certification, it stated that “BOP and FCI  
 11 Dublin policies and practices will provide common proof” and “[a]nyone incarcerated at  
 12 FCI Dublin is subject to the same BOP-wide policies on sexual assault prevention and  
 13 reporting as well as their specific implementation by the officer...at FCI Dublin.” Mot.  
 14 Class Cert. at 16. When it appointed the Special Master, the Court found “that the  
 15 monitoring of the adults in custody (“AICs”) who left the facility for other institutions is  
 16 now required” and exercising the Court’s “inherent authority to APPOINT Still and a  
 17 subset of her team as Monitor of BOP’s compliance with court orders and to ensure that  
 18 FCI Dublin AICs receive appropriate follow up care and support in their new facilities.”  
 19 See Order No. 3 re: Special Master at 1. And when it extended the relief of the Special  
 20 Master’s appointment, the Court found “the Court here has ordered relief designed to  
 21 address the constitutional deprivations experienced by Dublin AICs. All relief is directly  
 22 tied to those issues.” Extension Order at 7.

23 BOP cannot invoke mootness to evade accountability for the effects of the policies  
 24 at issue when it remains the party responsible for setting, modifying, and enforcing them,  
 25 and while class members remain in custody under BOP control and subject to ongoing  
 26 systemic failures that only exacerbate the harm class members already suffered while  
 27 housed at FCI Dublin. See *Nelson*, 271 F.3d at 897 (rejecting transfer-related mootness  
 28 where claims were raised against director of California’s prisons who “set policy for the

whole California prison system"); *see also Rupe v. Cate*, 688 F. Supp. 2d 1035, 1043 (E.D. Cal. 2010) ("Because Plaintiff is still incarcerated in a prison run by the [same correctional agency], his claims based on this alleged policy are not moot."). This is particularly true where the facts suggest the defendant "suspend[ed] its challenged conduct after being sued" only to "win dismissal," while preserving the option to "later pick up where it left off." *Fikre*, 601 U.S. at 241; *cf. Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 165 (2016), *as revised* (Feb. 9, 2016) (rejecting mootness claim because granting it would have "place[d] the defendant in the driver's seat" and allowed the defendant through unilateral action "to avoid a potential adverse decision" ordering more relief). "A live case or controversy cannot be so easily disguised, and a federal court's constitutional authority cannot be so readily manipulated." *Fikre*, 601 U.S. at 241.

Each of the cases the Government cites is readily distinguishable because, by contrast, none involved ongoing challenges on a class-wide basis to agency-wide policies, the effects of which were still being felt by Plaintiffs after their transfers. *See Dilley v. Gunn*, 64 F.3d 1365, 1368 (9th Cir. 1995) (release from prison will not moot case where "suit has been certified as a class action"); *Johnson v. Moore*, 948 F.2d 517, 519 (9th Cir. 1991) (claim moot only because individual Plaintiff "no longer is subjected to [complained of] policies"); *Darring v. Kincheloe*, 783 F.2d 874, 876 (9th Cir. 1986) (transfer mooted case because claims concerned institution-specific order). Because class members continue to seek the same remedies as before (e.g., improved means to report abuse up the chain at BOP and to outside agencies, improved BOP policies for investigating abuse and preventing retaliation) even after the temporary closure of Dublin, this is not a case where the court "'can no longer provide' [the] requested relief" as a result of an individual's transfer. *Pinson v. Carvajal*, 69 F.4th 1059, 1064 (9th Cir. 2023) (quoting *Munoz v. Rowland*, 104 F.3d 1096, 1097–98 (9th Cir. 1997)). Quite to the contrary, as the Special Master's report reflects, Plaintiffs remain in dire need of the ongoing relief the Court has already begun to provide on a class-wide basis. Nimni Decl., ¶ 2, Ex. A (Special Master's Report) at 6 ("[REDACTED]

1 [REDACTED]  
 2 [REDACTED]"); *id.* at 13 ("[REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]."); *id.* at 28  
 6 ([REDACTED]  
 7 [REDACTED]  
 8 [REDACTED].")

9 The Government also cites a number of unpublished district court cases concerning  
 10 claims of infringement of rights of religious practice in prisons, none of which is  
 11 analogous to the claims here. None of these cases involved claims made against  
 12 correctional agencies concerning policies beyond the single institution from which the  
 13 plaintiff was transferred; indeed, in one, the plaintiff conceded that "his religious needs  
 14 [we]re being met" post transfer. *Munoz v. Tilton*, No. 5:07-CV-03846 EJD, 2013 WL  
 15 2146583, at \*8 (N.D. Cal. May 15, 2013); *see also Abel v. Martel*, No. 2:09-CV-1749  
 16 JAM CKD, 2013 WL 552416, at \*2 (E.D. Cal. Feb. 13, 2013); *Rodriguez v. Hubbard*, No.  
 17 1:10-CV-00858-DLB PC, 2012 WL 4490768, at \*2 (E.D. Cal. Sept. 28, 2012); *Burton v.*  
 18 *Clark*, No. 1:09-CV-00061-AWI, 2012 WL 3205425, at \*3–7 (E.D. Cal. Aug. 3, 2012).

19 In short, the AICs from FCI Dublin are still at risk of harm, and while they are, the  
 20 case cannot be moot.

21       **C. The injunctive relief issued in this matter has not expired, nor has the  
 22 appointment of the Monitor.**

23       The Court's July 1, 2024, Order Extending the Preliminary Injunction makes clear  
 24 that the preliminary relief has not expired and that the appointed Monitor can continue her  
 25 work. To address Defendants' arguments Plaintiffs briefly detail below why, even absent  
 26 that order, the relief had not yet expired, although now all relief is subject to the Court's  
 27 delineated findings and timeline in ECF No. 336.

28       **1. Defendants' motion is inappropriately tied to ECF No. 222 while  
 seeking to vacate relief issued under the Closure Order (ECF No.**

**300) and Order Appointing a Court Monitor (ECF No. 308).**

Defendants move to vacate the existing injunctive relief on the basis that the Order Granting Preliminary Injunction (ECF No. 222) was entered on March 15, 2024, and therefore, under the PLRA’s 90-day rule for preliminary relief, should terminate on June 15, 2024. Defs.’ Mot. to Dismiss at 13–14. This is inappropriate at this stage. As this Court explained in its Extension Order, the relief in the Preliminary Injunction Order was not entered until April 5, 2024 (ECF No. 248, “Appointment Order”), so it would have run on July 4, 2024, but has since been extended to October 2, 2024. However even if that relief had not been extended, Defendants’ challenge would be untimely. After the Appointment Order was entered, the Closure Order was entered on May 8, 2024 and would have expired on August 8, 2024. The Monitor Order was then entered on May 20, 2024 and would have expired on August 18, 2024. The 90-rule runs from the entry of the relief in question so there was no basis for Defendants to tie the expiration date to the initial March 15, 2024 date. See 18 U.S.C. § 3626(a)(2). Regardless, no matter the starting point, the Court’s Extension order now firmly sets the expiration date for relief as October 2, 2024 unless or until it is renewed or made final.<sup>1</sup>

**2. The appointment of Ms. Still as Court Monitor is not subject to the restrictions of the PLRA because Monitor is a distinct role from that of Special Master.**

19 Ms. Still's role has now been extended to October 2, 2024. See Extension Order.

21       <sup>1</sup> The Court can also at any time convert preliminary relief into prospective relief. 18  
22 U.S.C. § 3626(a)(2). 18 U.S.C. § 3626(g)(7) defines prospective relief as “all relief other  
23 than compensatory monetary damages.” 18 U.S.C. § 3626(g)(7). And prospective relief,  
24 which is subject to different time constraints under the PLRA, need not be a permanent  
25 injunction, but simply relief that is beyond the scope of preliminary relief and without  
26 automatic expiration. *Id.* Prospective relief may be entered regardless of whether the  
27 Court enters new prospective relief or whether the Court changes preliminary relief into  
28 prospective relief by making the required findings under 18 U.S.C. § 3626(a)(1) and  
“making the order final.” The required findings under the Ninth Circuit’s interpretation of  
the needs-narrowness-intrusiveness test require no magic words and have been repeatedly  
made by this Court. *Gilmore v. People of the State of California*, 220 F.3d 987, 1007 n. 25  
(9th Cir.2000). Further, ‘making the order final’ for the purposes of the PLRA is not the  
same as ‘entering a final order.’ *See Georgia Advoc. Off. v. Jackson*, 4 F.4th 1200, 1217  
(11th Cir. 2021), vacated, 33 F.4th 1325 (11th Cir. 2022) (Wilson, J., dissenting) (detailing  
how ‘final’ in the context of § 3626(a)(2) simply means “not to be processed further”  
rather than an indication of a final order).

1 Alternatively, even if it had not been, and as relevant for future challenges, Ms. Still’s  
 2 appointment as Monitor in this case is distinct from her appointment as Special, as noted in  
 3 the Court’s Order converting Ms. Still’s position. Order No. 3 re: Special Master 1  
 4 (describing the position of Monitor as “distinct” from that of Master). While the PLRA  
 5 governs the appointment of Special Masters, it does not govern the appointment of Court  
 6 Monitors with different powers. Even if the PLRA did govern the appointment of Ms. Still  
 7 as Monitor, that appointment has now been extended as detailed above.

8 The change in title is more than semantic. Special Masters under the PLRA are  
 9 particular positions that, in line with the Court’s power to appoint them under Rule 53,  
 10 have a quasi-judicial rule that includes, *inter alia*, conducting hearings or issuing  
 11 sanctions. Fed. R. Civ. Proc. 53(c). Positions, including Monitors, that do not entail such  
 12 powers are untouched by the PLRA. In fact, the unpassed predecessor bill to the PLRA,  
 13 the Stop Turning Out Prisoners (“STOP”) Act, “expressly provided that in prison  
 14 conditions litigation, ‘any special master or monitor shall be a United States magistrate and  
 15 shall make proposed findings on the record on complicated factual issues submitted to that  
 16 special master or *monitor* by the court, but shall have no other function.’” *Benjamin v.*  
 17 *Fraser*, 343 F.3d 35, 46 (2d Cir. 2003) (emphasis in original), *overruled on other grounds*  
 18 by *Caiozzo v. Koreman*, 581 F.3d 63 (2d Cir. 2009). In later passing the PLRA, Congress  
 19 intentionally removed the term “monitor” so as to not limit the court’s powers to appoint a  
 20 wide variety of positions to assist with the administration of the case. 18 U.S.C.A. § 3626.  
 21 In *Benjamin v. Fraser*, 343 F.3d 35 (2d Cir. 2003), the Second Circuit dealt with the  
 22 precise issue that Defendants raise in their motion. Defendants in *Fraser* sought to  
 23 terminate the court appointed monitoring organization set up to observe and make reports  
 24 about jail conditions. *Fraser*, 343 F.3d at 43. The Court there determined that because the  
 25 Monitor was simply monitoring and reporting, rather than conducting quasi-judicial  
 26 functions, the appointment was not subject to the limitations of the PLRA. *Id.* at 46. The  
 27 same is true of the duly appointed Monitor here. Ms. Still was bound by the PLRA as a  
 28 Special Master, and properly appointed by the process that the Court used to select her. 18

1 U.S.C.A. § 3626(f). Now, in her new role as Monitor with its new mandate (as narrowly  
 2 outlined in the Closure Order), Ms. Still's appointment is unbounded by the PLRA,  
 3 although still subject to the Court's inherent authority to craft appropriate injunctive relief.

4 **III. Discovery should not be stayed pending resolution of Defendants' motion.**

5       **A. A stay of discovery is not issued as a matter of right, particularly here  
           where this case has been pending for nearly ten months, has had  
           significant proceedings, and is only several months from the close of fact  
           discovery.**

8       Defendants' motion lacks merit. As an initial matter, "the [C]ourt must take a  
 9 'preliminary peek' at the merits of the pending motion to dismiss to assess whether a stay  
 10 is warranted." *Tavantzis v. Am. Airlines, Inc.*, No. 23-CV-05607-BLF, 2024 WL 812012,  
 11 at \*1 (N.D. Cal. Feb. 23, 2024). As explained above, Defendants' Motion fails on the  
 12 merits. This alone warrants denial of Defendants' request to stay discovery. *See id.* at \*2  
 13 ("[T]he Court has taken its 'preliminary peek' and finds that American Airlines has not  
 14 met its heavy burden of making a strong showing that a stay is warranted.").

15       **B. Plaintiffs will be prejudiced by a discovery stay.**

16       The close of fact discovery (October 31) is fast approaching—less than four months  
 17 away. Staying discovery will impair Plaintiffs' ability to obtain the discovery it needs,  
 18 particularly given Defendants' refusal to meaningfully engage with Plaintiffs' discovery  
 19 requests. Additionally, the Court has now ordered the parties to meet and confer in regard  
 20 to pre-hearing discovery for the upcoming evidentiary hearings. Extension Order 8.

21       Any stay of discovery will be inefficient, and would negatively impact the case  
 22 schedule and derail resolution of this important cause. *Schoppe-Rico v. Lewis*, No. C 11-  
 23 04283-YGR-PR, 2012 WL 3022441, at \*1 (N.D. Cal. July 24, 2012) ("[S]taying discovery  
 24 would only further delay resolution of the case if the motion to dismiss is denied.  
 25 Accordingly, Defendants' motion to stay discovery is DENIED."). Indeed, "[t]he mere  
 26 filing of a motion to dismiss is not ordinarily sufficient to stop the discovery process, derail  
 27 a case schedule, and delay proceedings. If it was, every case with a pending second-round  
 28 motion to dismiss—the large majority of federal actions—would be stayed at some point.

1 That sort of inefficient and chaotic system is not contemplated by the Federal Rules, and is  
 2 in any event ‘directly at odds with the need for expeditious resolution of litigation.’”  
 3 *Optronic Techs., Inc. v. Ningbo Sunny Elec. Co.*, No. 5:16-CV-06370-EJD, 2018 WL  
 4 1569811, at \*2 (N.D. Cal. Feb. 16, 2018) (citing *Gray v. First Winthrop Corp.*, 133 F.R.D.  
 5 39, 40 (N.D. Cal. 1990)).

6       **C. Defendants will not be prejudiced without a discovery stay.**

7       Defendants do not argue that they will be prejudiced without a discovery stay, nor  
 8 could they. “Defendants have not offered a particularized showing describing why  
 9 discovery in this case is any more burdensome than it is on parties to other civil litigations.  
 10 Discovery is not stayed just because it imposes *some* burden.” *Optronic*, 2018 WL  
 11 1569811, at \*2. The certified class includes more than 600 Plaintiffs and the veracity of  
 12 their constitutional allegations has already been upheld. *See Order Granting Prelim. Inj.*;  
 13 *see also, e.g.*, Nimni Decl., ¶ 2, Ex. A (Special Master’s Report) at 13 (“[REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]”) (emphasis added). Defendants have failed to meet  
 16 their burden for a stay.

17       **IV. CONCLUSION**

18       For the forgoing reasons Defendants motion to dismiss and vacate should be denied.  
 19 If the Court grants the motion Plaintiffs respectfully request leave to amend.

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1 DATED: July 2, 2024

Respectfully submitted,

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